

WALTER B. FREEMAN ET AL.

IBLA 76-420

Decided June 10, 1976

Appeal from decisions of the Oregon State Office, Bureau of Land Management, declaring the Logan Association Placer Claims Nos. 3 and 4 null and void ab initio (OR 15059, OR 15060).

Reversed and remanded.

1. Mining Claims: Generally--Mining Claims: Location-- Mining Claims: Withdrawn Land--Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

2. Statutory Construction: Generally--Wild and Scenic Rivers Act

Where a statute designates the Illinois River as a potential addition to the river system, and similarly designates other rivers and their tributaries, the tributaries of the Illinois River are not included as potential additions, under the principle inclusion unius alterius exclusio est.

APPEARANCES: Walter B. Freeman, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision of the Oregon State Office, Bureau of Land Management, dated December 22, 1975, declaring the Logan Association Placer Claim Nos. 3 and 4 null and void ab initio for the stated reason that the land was withdrawn from mineral entry by the designation of the Illinois River as a potential addition to the Wild and Scenic Rivers System. 16 U.S.C. § 1271 et seq. (1970).

Walter B. Freeman, Blanche E. Freeman, Verne D. McDonald and Richard Tippy filed a Notice of Location of the claims on November 10, 1975. The site of appellants' claims is more than one-quarter mile from the Illinois River, the entire length of which is included in the list of rivers designated as potential additions to the system. 16 U.S.C. § 1276(a)(9). Although a tributary to the Illinois River flows through the claim, the statute did not expressly include the tributaries to the Illinois River, and the statute did not withdraw the minerals from appropriation under the mining laws.

Appellants contend that the land is not within one-quarter mile of the Illinois River and was therefore not withdrawn from mineral entry by the Wild and Scenic Rivers Act. The State Office's decision is based on the fact that a tributary of the Illinois River flows through the claim.

[1, 2] 16 U.S.C. § 1280 states the limits of the mineral withdrawal effected by designation of a river as a potential addition to the Wild and Scenic River System:

The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 1278(b) of this title. * * *

16 U.S.C. § 1276(a)(9) designates the entire length of the Illinois River but does not expressly include its tributaries. A number of other listings expressly include tributaries. See, e.g. 16 U.S.C. § 1276(a)(15) (1970), and 16 U.S.C. § 1276(a)(43), (44), (47), (49) (Supp. IV, 1974). 1/ Invoking the principle of

1/ We recognize that tributaries of a segment of the Little Beaver River were expressly excluded, but the express exclusion only serves to distinguish excluded tributaries from expressly included sources. 16 U.S.C. § 1276(a)(10). Also, tributaries of a certain segment of the main stem of the Little Miami River were expressly excluded, but only to distinguish those tributaries from the expressly included tributaries of other segments of the river. 16 U.S.C. § 1276(a)(11).

statutory construction that inclusio unius alterius exclusio est, we conclude that Congress did not intend to include the tributaries of the Illinois River when the river was designated as a potential addition to the system. Therefore, 16 U.S.C. § 1280(b) does not operate to withdraw minerals in land near the tributary of a river designated as a potential addition to the Wild and Scenic Rivers System where tributaries are not expressly included.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further action consistent with this opinion.

Frederick Fishman

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

